

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

THOMAS M. MULLANEY, ESQ., Individually And On  
Behalf of All Others Similarly Situated,

08 CV 7324 (CM)(THK)

Plaintiffs,

**VERIFIED ANSWER**

-against-

DELTA AIR LINES, INC.

Defendant.

-----X

The Defendant, DELTA AIR LINES, INC. ("DELTA"), answering the Complaint of THOMAS M. MULLANEY, ESQ., Individually and on Behalf of All Others Similarly Situated ("Plaintiff") by its attorneys Quirk and Bakalor, P.C., respectfully alleges the following upon information and belief:

**PARTIES**

1. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "1" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.
2. Admits the allegations contained in paragraph numbered "2" of the Plaintiff's Complaint.

**JURISDICTION**

3. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "3" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

4. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "4" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

**VENUE**

5. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "5" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

**FACTS**

6. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "6" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

7. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "7" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

8. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "8" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

9. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "9" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

10. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "10" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

11. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "11" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

12. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "12" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

13. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "13" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

14. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "14" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

15. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "15" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

16. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "16" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

17. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "17" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

18. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "18" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

19. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "19" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

20. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "20" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

21. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "21" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

#### CLASS ACTION ALLEGATIONS

22. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "22" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

23. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "23" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

24. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "24" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

25. Denies the allegations contained in the paragraph numbered "25" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

26. Denies the allegations contained in the paragraph numbered "26" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

27. Denies the allegations contained in the paragraph numbered "27" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

28. Denies the allegations contained in the paragraph numbered "28" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

29. Denies the allegations contained in the paragraph numbered "29" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

**AS AND FOR A FIRST CAUSE OF ACTION**

**N.Y. Gen Bus. Law**

30. Repeats, reiterates and realleges each and every admission and denial as is contained herein in response to the allegations contained in the paragraphs numbered "1" through "29" of the Plaintiff's Complaint.

31. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "31" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

32. Denies knowledge and information sufficient to form a belief as to the allegations contained in the paragraph numbered "32" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

33. Denies the allegations contained in the paragraph numbered "33" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

34. Denies the allegations contained in the paragraph numbered "34" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

**AS AND FOR A SECOND CAUSE OF ACTION**

**Promissory Estoppel**  
**(As Against All Defendants)**

35. Repeats, reiterates and realleges each and every admission and denial as is contained herein in response to the allegations contained in the paragraphs numbered "1" through "35" of the Plaintiff's Complaint.

36. Denies the allegations contained in the paragraph numbered "36" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

37. Denies the allegations contained in the paragraph numbered "37" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

38. Denies the allegations contained in the paragraph numbered "38" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

39. Denies the allegations contained in the paragraph numbered "39" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

**AS AND FOR A THIRD CAUSE OF ACTION**

**Unjust Enrichment**

40. Repeats, reiterates and realleges each and every admission and denial as is contained herein in response to the allegations contained in the paragraphs numbered "1" through "40" of the Plaintiff's Complaint.

41. Denies the allegations contained in the paragraph numbered "41" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

42. Denies the allegations contained in the paragraph numbered "42" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

43. Denies the allegations contained in the paragraph numbered "43" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

44. Denies the allegations contained in the paragraph numbered "44" of the Plaintiff's Complaint and respectfully refers all matters of law contained therein to the Court.

**AS AND FOR A FIRST DEFENSE**

45. The Plaintiff's Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND DEFENSE**

46. The Plaintiff's action arises under a treaty of the United States, the Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, reprinted in S. Treaty Doc. No. 106-45, 1999 WL 33292734 (2000) ("Montreal Convention"). The Montreal Convention exclusively governs the Plaintiff's rights and remedies in this action, and preempts the New York statutory and common law claims alleged in the Plaintiff's Complaint.

**AS AND FOR A THIRD DEFENSE**

47. DELTA avails itself of all defenses available to it under the Montreal Convention including, but not limited to, the defenses set forth in Article 19.

**AS AND FOR A FOURTH DEFENSE**

48. That if any of Plaintiff's claims relate to rates, routes or services as set forth in the 1978 Airlines Deregulation Act, 49 U.S.C. § 41713(b)(1), then Plaintiff's claims are preempted by same.

**AS AND FOR A FIFTH DEFENSE**

49. The Federal Aviation Act of 1958, P.L. 85-726, 72 Stat. 731, 49 U.S.C. §§ 40101 *et seq.*, and the regulations promulgated thereunder implicitly preempt any State law standard that purports to govern aviation safety, equipment, and operational standards.

**AS AND FOR A SIXTH DEFENSE**

50. The Plaintiff's claims may be barred, in whole or in part, by the doctrines of waiver, estoppel, laches and/or unclean hands.

**AS AND FOR A SEVENTH DEFENSE**

51. The Plaintiff may have failed to mitigate damages.

**AS AND FOR AN EIGHTH DEFENSE**

52. The actions or omissions of the DELTA are not the proximate cause of any injury or damages allegedly sustained by Plaintiff.

**AS AND FOR A NINTH DEFENSE**

53. The Plaintiff's alleged damages were caused by the unforeseeable, intervening and/or superseding acts of third parties for which DELTA is not responsible.

**AS AND FOR A TENTH DEFENSE**

54. That if any of the injuries or damages allegedly sustained by the Plaintiff were caused in whole or in part by the culpable conduct of, and/or assumption of risk by Plaintiff, then DELTA respectfully demands that the amount of damages which may be recoverable by Plaintiff be diminished in the proportion which Plaintiff's culpable conduct and/or assumption of risk bears to the culpable conduct which caused the damages.

**AS AND FOR AN ELEVENTH DEFENSE**

55. Pursuant to Article 16 of New York Civil Procedure Law and Rules DELTA hereby demands that the liability, if any, of DELTA be limited to DELTA's equitable share determined in accordance with the relative culpability of each and every party or non-party, causing or contributing to the total liability for non-economic loss. If DELTA's liability is found to be fifty percent or less of total liability assigned to all liable persons due to the Plaintiff's failure to join a necessary tortfeasor, the Plaintiff's non-economic recovery shall be limited to the percentage of DELTA's liability.

**AS AND FOR A TWELFTH DEFENSE**

56. Any past or future cost or expense incurred or to be incurred by the Plaintiff for medical care, dental care, custodial care or rehabilitative services, loss of earnings or other economic loss, was or will be within reasonable certainty be replaced or indemnified in whole or in part for collateral sources such as defined in Section 4545(c) of the New York Civil Practice Law and Rules and, if any, damages are recoverable against DELTA, the amount of such damages shall be reduced by the amount of benefits which the Plaintiff has or will receive from such collateral source.

**AS AND FOR A THIRTEENTH DEFENSE**

57. That the use of State law to contradict or supplement federal aviation legislation and the regulations promulgated thereunder would be an unconstitutional burden on interstate air commerce.

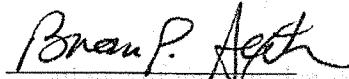
The Defendant, Delta Air Lines, Inc., hereby reserves the right to add additional defenses as based on information obtained during investigation or discovery. Nothing

contained herein shall be deemed to impose upon Defendant any burden of proof not imposed by applicable substantive law.

**WHEREFORE**, the Defendant, Delta Air Lines, Inc., demands judgment dismissing the Plaintiff's Complaint together with such costs and disbursements of this action, plus all attorneys' fees and all other costs herein.

Dated: New York, New York  
August 26, 2008

QUIRK AND BAKALOR, P.C.

By: 

Brian P. Sexton, Esq. (BPS 2883)  
*Attorneys for Defendant*  
DELTA AIR LINES, INC  
845 Third Avenue, 15<sup>th</sup> Floor  
New York, New York 10022  
(212) 319-1000

TO: LAW OFFICES OF THOMAS M. MULLANEY  
*Attorneys for Plaintiffs*  
708 Third Avenue, Suite 2500  
New York, New York 10017  
(212) 223-0800

**ATTORNEY VERIFICATION**

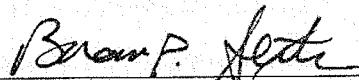
BRIAN P. SEXTON, an attorney admitted to practice in the courts of the State of New York hereby affirms under the penalties of perjury:

I am a member of the law firm QUIRK AND BAKALOR, P.C., attorneys for defendant,  
**DELTA AIR LINES, INC.**

I have read the foregoing **VERIFIED ANSWER** and know the contents thereof to be true, to my knowledge, except as to those matters alleged to be upon information and belief, which matters I believe to be true.

This verification is made by your affiant because defendant resides outside of the county in which your affiant's office is located.

Dated: New York, New York  
August 26, 2008

  
\_\_\_\_\_  
BRIAN P. SEXTON, ESQ.

By Attorney

Case 1:08-cv-07324-CM Document 4 Filed 08/26/2008 Page 12 of 13

 Attorney's Affirmation

has been compared by me with the original and found to be a true and complete copy.

the attorney(s) of record for  
action; I have read the foregoing  
the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters  
I believe it to be true. The reason this verification is made by me and not by

in the within

and know the contents thereof;

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK, COUNTY OF

I, the undersigned, being duly sworn, depose and say: I am  
 Individual Verification in the action; I have read the foregoing

ss.:

The name signed must be printed beneath

 Individual Verification

and know the contents thereof; the same is true to my own knowledge, except

 Corporate Verificationas to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.  
the of acorporation and a party in the within action; I have read the foregoing  
and know the contents thereof; and the same is true to my own knowledge,except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This  
verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF New York

ss.:

(If more than one box is checked—indicate after names type of service used.)

I, the undersigned, being sworn, say: I am not a party to the action, am over 18 years of age and reside at Bronx, N.Y.

August 26, 2008

Verified Answer

OXX

 Service By MailI served the within  
by mailing a copy to each of the following persons at the last known address set forth after each name below. Personal Service on Individualby delivering a true copy of each personally to each person named below at the address indicated. I knew each person served  
to be the person mentioned and described in said papers as *a party therein*: Service by Electronic Meansby transmitting a copy to the following persons by  FAX at the telephone number set forth after each name below  E-MAIL  
at the E-Mail address set forth after each name below, which was designated by the attorney for such purpose, and by mailing a  
copy to the address set forth after each name. Overnight Delivery Serviceby dispatching a copy by overnight delivery to each of the following persons at the last known address set forth after each name  
below.

LAW OFFICES OF THOMAS M. MULLANEY

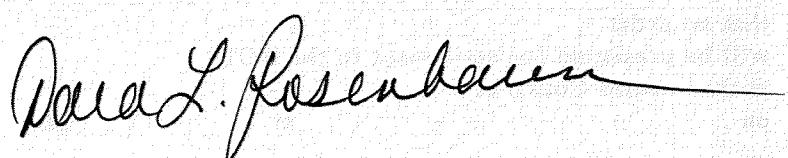
Attorneys for Plaintiffs

708 Third Avenue, Suite 2500

New York, New York 10017

(212) 223-0800

DARA L. ROSENBAUM  
Notary Public, State of New York  
No. 02RO6117218  
Qualified in New York County  
Commission Expires October 25, 2008

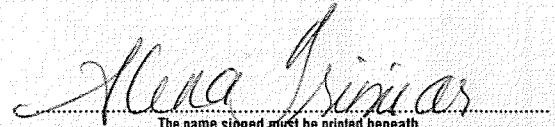


Sworn to before me on

August 26, 2008

The name signed must be printed beneath

Alena Trimiar



THOMAS M. MULLANEY, ESQ., Individually And On Behalf Of All Others Similarly Situated,

Plaintiff,

-against-

DELTA AIR LINES, INC.,

Defendant.

## VERIFIED ANSWER

## QUIRK AND BAKALOR, P.C.

Defendant  
*Attorney(s) for* DELTA AIR LINES, INC.*Office and Post Office Address, Telephone*845 Third Avenue  
NEW YORK, NEW YORK 10022  
(212) 319-1000

To

Signature (Rule 130-1.1-a)

Print name beneath

Service of a copy of the within is hereby admitted.

Attorney(s) for

Dated: \_\_\_\_\_

## PLEASE TAKE NOTICE:

 NOTICE OF ENTRYthat the within is a (*certified*) true copy of a  
duly entered in the office of the clerk of the within named court on NOTICE OF SETTLEMENTthat an order  
will be presented for settlement to the HON.  
within named Court, at  
on

at M.

Dated,

of which the within is a true copy  
one of the judges of the

Yours, etc.

QUIRK AND BAKALOR, P.C.